

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTHONY MENDES
And DORIS MENDES,

Plaintiffs,

v.

CENDANT MORTGAGE,

Defendant.

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) Civil Action No. 05CV11765DPW
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ANSWER TO COMPLAINT

Defendant, Cendant Mortgage, now known as PHH Mortgage Corporation, (PHH Mortgage) hereby answers the numbered paragraphs of the Complaint as follows:

1 . PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Complaint.

2 . Admitted, except that PHH Mortgage's street address in New Jersey is 3000 Leadenhall Road, not 3000 Leodenhall Road.

3 . Denied.

4 . PHH Mortgage denies the allegations in the first two sentences of paragraph 4 of the Complaint. PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence of paragraph 4 of the Complaint.

5 . PHH Mortgage denies the allegations in the first sentence of paragraph 5 of the Complaint. PHH Mortgage answers the allegations in the second sentence of paragraph 5 of the Complaint by stating that Exhibit A, in its entirety, speaks for itself. To the extent that the allegations set forth in paragraph 5 of the Complaint misstate or mischaracterize the substance,

content or import of such exhibit, or cite to the same out of context or in a misleading fashion, they are denied.

6 . PHH Mortgage answers the allegations in paragraph 6 of the Complaint by stating that Exhibit B, in its entirety, speaks for itself. To the extent that the allegations set forth in paragraph 6 of the Complaint misstate or mischaracterize the substance, content or import of such exhibit, or cite to the same out of context or in a misleading fashion, they are denied.

7 . PHH Mortgage answers the allegations in paragraph 7 of the Complaint by stating that Exhibit B, in its entirety, speaks for itself. To the extent that the allegations set forth in paragraph 7 of the Complaint misstate or mischaracterize the substance, content or import of such exhibit, or cite to the same out of context or in a misleading fashion, they are denied.

8 . PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first three sentences of paragraph 8 of the Complaint. PHH Mortgage denies the allegations in the fourth sentence of paragraph 8 of the Complaint.

9 . Denied. Further answering, PHH Mortgage states that Exhibit C, in its entirety, speaks for itself. To the extent that the allegations set forth in paragraph 9 of the Complaint misstate or mischaracterize the substance, content or import of such exhibit, or cite to the same out of context or in a misleading fashion, they are denied.

10 . PHH Mortgage answers the allegations in the first sentence of paragraph 10 of the Complaint by stating that Exhibit C, in its entirety, speaks for itself. To the extent that the allegations set forth in paragraph 10 of the Complaint misstate or mischaracterize the substance, content or import of such exhibit, or cite to the same out of context or in a misleading fashion, they are denied. PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 10 of the Complaint.

1 1 . PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint.

1 2 . Denied.

1 3 . Admitted.

1 4 . Paragraph 14 of the Complaint is a conclusion of law to which no answer is required.

1 5 . Denied.

1 6 . Denied.

1 7 . PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint that the owners of 1-3 Chilson Street then sold that property within 30 days of the date on which Mr. and Mrs. Mendes indicated that they could not purchase the property. PHH Mortgage denies the remaining allegations in paragraph 17 of the Complaint.

1 8 . PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint.

1 9 . PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint.

2 0 . PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint.

2 1 . PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint.

2 2 . PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint.

23. Admitted.

24. PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint. Further answering, the allegations in paragraph 24 of the Complaint appear to be incomplete.

25. PHH Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint.

Count I
(Breach of Contract)

26. PHH Mortgage incorporates by reference paragraphs 1-25 of this Answer.

27. Denied.

28. Denied.

29. Denied.

Count II
(Breach of Implied Contract)

30. PHH Mortgage incorporates by reference paragraphs 1-29 of this Answer.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

Count III
(Violation of Chapter 93A)

35. PHH Mortgage incorporates by reference paragraphs 1-34 of this Answer.

36. Admitted.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their damages.

Wherefore, PHH Mortgage requests that this Court enter a judgment of dismissal in its favor on all of Plaintiffs' claims, award it costs, and such other relief as this Court deems just and proper.

PHH MORTGAGE CORPORATION,
f/k/a Cendant Mortgage,

By its attorneys,

/s/ Andrew Keith Goldstein
Thomas I. Elkind, BBO# 153080
Andrew K. Goldstein, BBO #552239
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Dated: September 2, 2005.

CERTIFICATE OF SERVICE

I, Andrew Keith Goldstein, hereby certify that on September 2, 2005, I caused the foregoing Answer to Complaint to be served by first class mail, postage prepaid, upon the Plaintiffs' attorney, Christopher J. Trombetta, Law Office of Christopher J. Trombetta, 310 North Main Street, Mansfield, MA 02048.

s/ Andrew Keith Goldstein

Andrew Keith Goldstein